Supreme Court, U.S.
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No. _____

In The

# Supreme Court of the United States

MOHAMED F. EL-HEWIE, Pro Se.
*Petitioner,*

versus

BOARD OF EDUCATION OF THE
BERGEN COUNTY VOCATIONAL
SCHOOL DISTRICT, BERGEN COUNTY,
*Respondents.*

## Petition For A Writ Of Certiorari To The SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

## PETITION FOR A WRIT OF CERTIORARI

Petitioner
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## QUESTION PRESENTED

**Whether** the dismissal of a claim of Law Against Discrimination (LAD) in the residency of New Jersey State's Provisional Teacher Program, which was raised in a state administrative litigation, offends the State or Federal Constitution, under the following circumstances:

**(a)** When the reviewing Appellate panel has abandoned its year 2008's holding in a similar residency question and arbitrarily reverted back to the year 1982's caselaw that is irrelevant to residency in the Provisional Teacher Program;
**(b)** When the State of New Jersey has eliminated the State Board of Education from the appeal process after it accepted Petitioner's briefs and replies, but held no review;
**(c)** When, after this Appellate' opinion was issued, the State Agency in question removed the Superintendent of the respondent's board of education from his position, for engaging in malfeasance over the past sixteen years, yet both the Supreme Court of New Jersey and the State Agency refused to undo the harm inflected by the Superintendent upon this Appellant;
**(d)** When the reviewing Appellate panel acknowledged its limited-scope of judicial review of an administrative agency decision and the New Jersey Supreme Court recognized that "thorny questions have arisen in previous cases of LAD claims allegedly raised in an administrative litigation before an administrative agency having concurrent jurisdiction with the [Division of Civil Rights]"?

## LIST OF PARTIES

The following is a list of all parties to the proceedings in the Court below, as required by Rule 24.1(b) and Rule 29.1 of the Rules of the Supreme Court of the United States.

1. Mohamed F. El-Hewie, appellant pro se.

2. Nowell Amoroso Klein Bierman, attorneys for respondent Board of Education of the Bergen County Vocational School District (Bradley M. Wilson, of counsel and on the brief; Lori E. Kolin, on the brief).

3. Attorney General of the State of New Jersey, attorney, for respondent Commissioner of Education, (Jennifer L. Campbell, Deputy Attorney General).

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## PETITION FOR A WRIT OF CERTIORARI

Petitioner Mohamed F. El-Hewie. respectfully prays that a writ of certiorari be issued to review the judgments of the Appellate Division of the Superior Court and of the Supreme Court of New Jersey. In plain contravention of the requirements of the Constitution of the United States and federal law. the Appellate Division of the Superior Court of New Jersey has embarked on an *ad hoc*, standardless, and lawless exercise of judicial power, which appeared designed to thwart the considered judgments of New Jersey's legislative branch. In a year 2009's opinion, the Supreme Court of New Jersey reversed the 2008's decision of the Appellate Division that attempted to uphold the state school law N.J.A.C. 6A:9-8, which requires the local boards of education to provide provisional teachers with a state-approved mentoring plan. Instead, the Supreme Court of New Jersey opined that a provisional teacher could be terminated from the Provisional Teacher Program if the hiring board refused to renew his/her contract without adhering the N.J.A.C. 6A:9-8. Meanwhile, the same Appellate Division that, in the year 2008, defended the rights of provisional teachers to the full protection of N.J.A.C. 6A:9-8, has abandoned its own 2008's holding and arbitrarily reverted to its year 1982's holding that nontenured teachers could be nonrenewed regardless of the violation of the state regulation by the hiring boards of education.

**Wherefore**, the court of last resort in the State of New Jersey has created a state of lawlessness in the employment of teachers in the State of New Jersey, by preventing the Appellate Division of the Superior Court from u`pholding the

state school laws; the Appellate Division of the Superior Court of New Jersey disregarded the opinion of its Supreme Court in Hennessey, supra, that questioned the impropriety of administrative litigation in claims of LAD; and the Commissioner of Education was compelled by the public outcry to remove the corrupt superintendent and board members for malfeasance that extended over sixteen years, **granting** certification by this Court could resolve the conflicts between:

(i) Dore v. Board of Educ. Of the Township of Bedminster (1982) and Leang v. Jersey City Board of Education (2009),

and between:

(ii) This Appellate's decision and New Jersey Supreme Court determination in Hennessey v. Winslow Twp., 875 A.2d 240, 245 (N.J. 2005)..

## OPINIONS BELOW

The Order of the Supreme Court of New Jersey is attached in Appendix (App 2-3). The opinion of Appellate Division of the Superior Court of New Jersey is attached in Appendix (App. 4-21). The final decision of the Commissioner of Education is attached in Appendix (App. 22-25). The Initial Decision of the ALJ is attached in Appendix (26-73).

## JURISDICTION

The judgment of the Supreme Court of New Jersey denying Plaintiffs application for certification of the opinion of the Appellate Division of the Superior Court of New Jersey was entered on April 20, 2010. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## STATUTES INVOLVED

This case involves 42 U.S.C. §§ 1981, 1983, 1985, 1986; N.J.S.A. § 18A:27-4.1a (pertaining to a board of education's appointment, transfer, or removal of officers and employees); and N.J.A.C. §§ 6A:9-8.3 ("Requirements for Instructional Certificate"), 6A:9-3.3 ("Professional Standards for Teachers"), and 6A:9-3.4 ("Professional Standards for School Leaders").

## STATEMENT OF THE CASE

Petitioner was hired on November 28, 2005 as an alternate route/ provisional teacher, to replace the resigned teacher; Dr. Orlov. Dr. Orlov quitted his teaching position abruptly, with the responding board of education, after a confrontation with the school Principal Patricia Cosgrove. Defendant's School District registered petitioner with the Provisional Teacher Program (PTP) on November 23, 2005. Petitioner started the PTP on February 28, 2006. On April 10, 2006, the school principal; Patricia Cosgrove notified petitioner with her

intention to terminate him. On May 19, 2006, the district's board of education affirmed the principal's decision to terminate appellant's teaching contract.

This dispute arises out of a decision by the Board of Education of the Bergen County Vocational School District ("the Board") not to renew Petitioner's contract for employment as a provisional teacher for the 2006-2007 school year while petitioner was still in Phase-One of the Teacher Training Program. Petitioner was terminated from the Provisional Teacher Program of the State of New Jersey without fulfilling the state requirements of *N.J.A.C.6A:9-8.3, 8.4, 8.6, and 8.7*. As such, Petitioner was thrown out of a teacher certification proceeding, with falsified mentoring documents, and without the complete three evaluations required by the State of New Jersey to certify or to deny certification of an alternate-route provisional teacher.

On June 21, 2006, appellant petitioned the Commissioner of Education to grant him emergent relief before the end of the first phase of the Provisional Teacher Program that ended on June 10, 2006. On July 10, 2006, the school principal, Patricia Cosgrove notified the PTP that "petitioner NEVER began in the position", "completed ZERO weeks of mentoring and ZERO weeks of full-time teaching." On December 6, 2006, Superintendent Robert Aloia notified the Provisional Teacher Program that petitioner was mentored and has taught 28 weeks. After the trial record closed, Plaintiff discovered that Aloia started his plan to remove Cosgrove from her position around that date.

After six-day evidentiary trial, the ALJ issued her Initial Decision on February 27, 2008. On April 11, 2008, the Commissioner adopted the Initial Decision of the ALJ and dismissed petitioner's complaint. On April 14, 2008 petitioner appealed to the State Board of Education (SBE) from the Commissioner's decision. On July 8, 2008, the Commissioner of Education aborted the petitioner's ongoing appeal process with the SBE.

As a consequence of the elimination of the SBE from the appeal process, Petitioner initiated anew an appeal with the Appellate Division of the Superior Court of New Jersey.

On October 5, 2009 and simultaneously with the Appellate Panel's commencement of argument (of Plaintiff's appeal concerning "*the fraudulent management of an educational institution.*" See App. 10, end of first paragraph), the Office of Fiscal Accountability and Compliance (OFAC) of the Department of Education was tipped by multiple complainants over the unethical/illegal/unsound business activities of the respondent's board. (reference document omitted). On February 1, 2010, the investigators of OFAC published their Report, chased the superintendent Robert Aloia out of his position by indefinitely suspending him. Simultaneously, on February 7, 2010, the County Executive and the Board of Freeholders removed the Board's President Jack Drakeford. The Report stated:

> "Toward the conclusion of the OFAC investigation, the superintendent was placed on administrative leave and an interim superintendent assumed control

> of the districts. The newly assigned interim superintendent took immediate steps to correct deficiencies and ensure compliance with statute and code." **(reference omitted)**

On December 24, 2009, the Appellate Division of New Jersey stated its limited-scope of review of an Agency decision and affirmed the Commissioner's final decision. On February 1, 2010, the **Report** refuted the Appellate's Opinion and pursued the engagement of the respondent's board in criminal fraud, by filing its factfindings with the same Attorney General, party to the instant action.

Petitioner, proceeding pro se, petitioned the Supreme Court of New Jersey for certification of the order of the Appellate Division of the Superior Court of New Jersey, which: (i) affirmed the Agency final decision by relying on Dore's 1982's, supra, (ii) dismissed the removal of the State Board of Education from on July 7, 2008, and (iii) dismissed its own holding in Leang's 2008, supra, regarding the rights of provisional teachers to state-approved mentoring during the residency in the Provisional Teacher Program.

On April 20, 2010, after accepting briefs, replies, and updates on the public outcry of the corruption with the Board, published in the Report of **OFAC**, the Supreme Court of New Jersey denied certification, with cost.

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The opinion of the Appellate Division of the Superior Court of New Jersey and the denial of

certification by the Supreme Court of New Jersey entail the following controversial points:

## POINT ONE

**The Appellate's decision contravenes with the prior decision of the same Appellate Court in Leang v. Jersey City Bd. of Educ., 399 N.J.Super. 329 (2008).**

In Leang (2008), supra, the same Appellate Court applied the School Laws N.J.A.C. 6A:9-8.3, 8.4, 8.6, and 8.7 in a manner that recognized the intent of the legislature in standardizing the mentoring program to help alternate-route provisional teacher succeed in teaching and secure tenure. Leang's Appellate Court opined:

> "Indeed, the mentoring program was to begin one month after the date of hire and required a support team consisting of at least the principal and the mentor. The mentor was to make five forty-minute contacts biweekly for the first ten weeks of teaching. Thereafter, the mentor was to have four forty-minute contacts every five weeks during the remaining twenty weeks of the program. The mentor was required to complete a "Visitation Form" following each contact."
>
> "[The Principal] admitted that not having the ESL curriculum would cause Sopharie's evaluations to be lower than they might have been."

Furthermore, Leang's Court emphasized the special circumstances that confront alternate-route teachers, beyond those of certified and trained nontenured teachers. The same Appellate Court reinstated Plaintiff's employment's contract. It

reasoned: "the repeated delays in obtaining the curriculum would increasingly undermine Plaintiff's evaluations and cause economic loss."

In Leang (2009) , supra, the Supreme Court of New Jersey disregarded the implied employment contract of provisional teachers in a state-residency program and thus reversed the Appellate's decision in Leang (2008), supra. Rather, the Court held Public entities liable for discrimination claims brought by their employees notwithstanding the limitations imposed by the Tort Claims Act (TCA).

In this Appellate's decision, the Court abandoned its reasoning in Leang (2008), on the essential roles of mentoring and provisional evaluations. The court reverted back to Dore v. Bd. of Educ., 185 N.J. Super. 447, 456 (App. Div. 1982) and reasoned, "the failure to strictly comply with statutory procedures does not require petitioner's reinstatement." While Dore, supra, dealt with a nontenured teacher who was neither provisional, nor alternate route teacher, but was rather a certified teacher in his third year of teaching, this Appellate Court arbitrarily dismissed all the improvements made (since Dore's 1982's regulation) in the year 2005's State School Laws N.J.A.C. 6A:9-8.3, 8.4, 8.6, and 8.7.

This Appellate panel made the following gross errors:

***(1) The Appellate's decision erred by concluding that the plaintiff was evaluated "twice" formatively, in the first phase of the PTP.***

(i) The Appellate's decision acknowledged clearly that Plaintiff [attended training in the spring of 2006 and received a certificate of completion for the first of three phases. He was discharged from ARP on March 15, 2006, however, when the Human Resource manager for the District learned of his termination.] See App. 6. As such, Plaintiff only completed the first phase of the Provisional Teacher Program, which coincides with the first formative-evaluation. Furthermore, Plaintiff was terminated from the PTP prior to the commencement of any mentoring, coursework, or provisional evaluation.

(ii) The Appellate's decision stated clearly that the first formative-evaluation was due at ten-week in the first phase of the PTP. The second formative-evaluation was due at twenty-week in the second phase of the PTP. The third summative-evaluation was due at thirty-four-week at the end of the third phase of the PTP. See App. 8. There is nothing in the record that supports the Appellate's decision's conclusion that Plaintiff was <u>twice</u> evaluated formatively.

(iii) Furthermore, the Appellate's decision's erred in limiting the characterization of provisional evaluations by concluding that "a summative-evaluation is done in paragraph form, whereas a formative-evaluation is completed by way of a checklist" See App. 8. The trial record clearly explains that "formative" and "summative" evaluations referred to the level of "forming" teaching skills and in "maturing" in provisional teaching experience, respectfully.

***(2) The Appellate's decision erred in overlooking the requirements of N.J.A.C. 6A:9-8.7.***

(i) N.J.A.C. 6A:9-8.7 (Recommendation for certification of provisional teachers) holds:

> (a) Within 30 days after the conclusion of the State-approved district training program, the building principal shall submit the final evaluation directly to the Secretary that shall contain a recommendation regarding standard certification for each provisional teacher.
>
> (b) The final evaluation for each provisional teacher shall include one of the following recommendations:
> 1. **Approved**: Recommends issuance of a standard certificate;
> 2. **Insufficient:** Recommends that a standard certificate not be issued but that the candidate be permitted to seek entry on one more occasion into a State-approved district training program; or
> 3. **Disapproved**: Recommends that a standard certificate not be issued and that the candidate not be allowed to enter into another State approved district training program.
>
> (c) Candidates who receive a recommendation of "**disapproved**" or two recommendations of "**insufficient**" may petition the Board of Examiners for approval of additional opportunities to seek provisional employment in districts other than those in which they received unfavorable recommendations pursuant to N.J.A.C. 6A:9-17.18."

(ii) Appellate's decision erroneously concluded that the alternate-route/provisional teachers' employment contract could be nonrenewed based on alleged poor-performance prior to the commencing of

the provisional teachers' training and mentoring, in disregard to N.J.A.C. 6A:9-8.3, 8.4, 8.6, and 8.7. (See App. 20.)

(iii) Appellate's decision erroneously concluded that the alternate-route/provisional teachers could be terminated from the PTP prior to the completion of the three phases of training, mentoring, and coursework, in disregard to N.J.A.C. 6A:9-8.3, 8.4, 8.6, and 8.7, and without any recommendation or evaluation of performance.

(iv) Wherefore, Plaintiff was never been declared "insufficient" by the school principal Patricia Cosgrove, who ceased to hold her position, nor was Plaintiff offered two formative and one summative-evaluations, the Appellate's decision erred on commenting on Plaintiff's performance in the absence of completely developed record. In Leang, supra, the same Appellate Court opined:

> "Nor do we know from the record whether [the Principal]'s conduct in ignoring [Plaintiff]'s repeated requests for the ESL curriculum, which [the Principal] admitted would result in increasingly unsatisfactory evaluations, caused economic loss to [Plaintiff]."

(v) Wherefore, Plaintiff's administrative record was incomplete due to the removal of the State Board of Education on July 7, 2008, by Jon Corzine's new law P.L. 2008, ct. 36, this court does not have clear facts on reasons why Patricia Cosgrove was removed from her position as school principal, while petitioner's trial was underway.

***(3) The Appellate's decision erred in applying "Dore v. Board of Educ. Of the Township of Bedminster" on provisional teacher certification.***

(i) In Dore, supra, a nontenured teacher challenged his nonrenewal for a *third contract year* since three evaluations of him were not conducted during the 1975-76 school year. Dore was teaching for two years and was not part of the PTP, that the three annual evaluations do not have the same effect as mentoring and training of an alternate route novice teacher.

(ii) In contrast to Dore, the current petitioner was barely starting a teacher-training program. Petitioner would be harmed irreparably if the mentoring and certification process were not rectified.

(iii) In 1975-1976, when **Dore**'s caselaw took place, the Board of Education, and not the Superintendent, was authorized to nonrenew teachers. The statutes were amended such that the Superintendent, and not the board members, recommends nonrenewal of a teacher. (N.J.S.A. 18A:12-24.1(c), (d), (h) and (j), refer to the board member's duty not to interfere with the superintendent's job and N.J.S.A. 18A:27-4.1 that delegates the task of terminating teacher to the superintendent, and not to the board members (as was the case in 1976, when **Dore** was adjudicated.))

Therefore, the Appellate's decision' assertion that "The board may reach its conclusion about a nontenured teacher on a broad base of input received

from a variety of people, including members of the public, parents of students and a board member's own knowledge of a teacher" is not applicable at the present time, pursuant to N.J.S.A. 18A:27-4.

***(4) The Appellate's decision erred by omitting the role of mentoring and training when comparing a provisional teacher to a well-trained teacher.***

The ALJ commented on Plaintiff's performance out of the framework of the state-approved teachers' training regulation, and by assuming that petitioner's performance was deficient, when petitioner was introduced to teaching in emergent situation on November 28, 2005, has barely started training, and was deprived from the state-approved Board's mentoring plan and PTP. See App. 35.

***(5) The Appellate's decision erred by omitting the emergent teaching experience which Respondent put petitioner through without any support or mentoring.***

(i) Dr. Orlov resigned suddenly on November 9, 2005, because of confrontation with the School Principal Patricia Cosgrove. Cosgrove ended up by losing her position as a principal on June 29, 2007, while the evidentiary trial ended on June 6, 2007. (Orlov – Direct, **TR. 3:** 21, 9-10/ 22, 1-22).

(ii) Petitioner took over Dr. Orlov's classes on November 28, 2005 and struggled for three months to get the five abandoned classes to catch up with other classes in the school.

***(6) The Appellate's decision erred in concluding that an alternate route/provisional teacher could complete the Provisional Teacher Program within SEVEN months.***

Plaintiff started teaching on November 28, 2005 through June 30, 2006:

(i) The Appellate's decision erred in concluding that the statute "**does not provide for any penalty in the event a local board fails to follow the pr[e]scribed procedures**". In Dore, that procedure was the internal evaluation of a certified teacher. In the current case, the state regulation *N.J.A.C.* 6A:9-8.3 holds:

> "(a) each district board of education shall be authorized to employ a provisional teacher *after its mentoring plan has been approved* pursuant to *N.J.A.C.* 6A:9-8.4(d) 3.
>
> (b) Each State-approved district training program shall provide *essential knowledge and skills* through the following training:
>
> 1. A full-time clinical experience of no less than 20 days duration shall be provided by in-district personnel as described and approved in the district's local mentor plan and may be in joint sponsorship with other educational entities. The clinical experience *shall prepare the novice teacher with the skills and knowledge to succeed in the initial teaching experience and shall take place prior to the time at which the novice* teacher takes full responsibility for a classroom. This clinical experience shall provide *high quality pre-professional support, instruction and clinical experiences and study in those essential*

> *areas* of professional study pursuant to *N.J.A.C.* 6A:9-3.3. This requirement shall not apply to provisional teachers who hold a CEAS pursuant to *N.J.A.C.* 6A:9-8.1(b).
> 2. On-going mentoring of the provisional teacher shall take place over a period of 30 weeks in accordance with the local mentor plan pursuant to *N.J.A.C.* 6A:9-8.4 and in accordance with the Professional Standards for Teachers."

(ii) While the Appellate's decision defends the school board's right to terminate teacher's contract , it conflicted with its prior decision in Leang, that:

> "[Plaintiff] has presented facts from which a reasonable finder of fact might conclude that the Board's mentor program was part of [Plaintiff]'s contract because that program was clearly intended to help provisional teachers to succeed and secure tenured."

## POINT TWO

**The Appellate's decision contravenes with the prior decision of its Supreme Court in Hennessey, supra, that questioned the impropriety of administrative litigation in claims of LAD. (cited by the United States Court of Appeals for Third Circuit in El-Hewie v. Bergen County, USCA for 3rd Circuit No. N.J.A.C. (issued September 17, 2009).**

Here, the Appellate Court recognized the following four inquiries that limit judicial review of an agency decision:

> (1) Whether the agency's decision offends the State or Federal Constitution; (2) whether the agency's action violates express or implied legislative policies; (3) whether the record contains substantial evidence to

> support the findings on which the agency based its action; and (4) whether in applying the legislative policies to the facts, the agency clearly erred in reaching a conclusion that could not reasonably have been made on a showing of the relevant factors.
>
> [Karins v. City of Atl. City, 152 N.J. 532, 540 (1998) (quoting George Harms Constr. Co. v. N.J. Tpk. Auth., 137 N.J. 8, 27 (1994)).]

See App. 12.

The Appellate's decision failed to explain how the Dore (1982)'s legislative policies would apply to the current plaintiff's provisional certification, mentoring, training, and employment. It also failed to recognize the recent opinion of the New Jersey Supreme Court on [Law Against Discrimination] in Hennessey v. Winslow Twp., 875 A.2d 240, 245 (N.J. 2005). In El-Hewie v. Bergen County, et. al., USCA for 3rd Circuit No. N.J.A.C. (issued September 17, 2009), the USCA For the 3rd Circuit emphasized:

> "the New Jersey Supreme Court has recognized that "thorny questions have arisen in previous cases in respect of whether preclusion of a [Law Against Discrimination] complaint is appropriate when the same LAD claim allegedly was raised in an administrative litigation before an administrative agency having concurrent jurisdiction with the [Division of Civil Rights]." (Citing Hennessey v. Winslow Twp., 875 A.2d 210, 245 (N.J. 2005)).

Therefore, the two higher courts in the State of New Jersey could not adhere to clear standards in upholding the state constitution, with the Supreme Court of New Jersey admitting that the state administrative agencies should not have the final

judgment on claims of LAD, yet the Appellate Division of the Superior Court of New Jersey affirms the administrative decision on LAD claim against all the provisions of the state law N.J.A.C. 6A:9-8. Likewise, when the Appellate Division attempted to uphold the teachers right the provisions of N.J.A.C. 6A:9-8.3, 8.4, and 8.6, the Supreme Court of New Jersey dismissed the implied contact of provisional teachers and reversed the previous opinion. Furthermore, when the OFAC of the Department of Education of New Jersey scathed the Board and the Superintendent of respondent for malfeasance, the Supreme Court dismissed Appellant's petition for certification and penalized him with the cost of petition.

## CONCLUSION

Wherefore, the Appellate Division of the Supreme Court of New Jersey and the Supreme Court of New Jersey are indifferent to the state and federal constitution by their embarking of lawless, *ad hoc*, and standardless application of law, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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